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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

I.T.R. No.32 of 1995

Date of decision:5.2.2007

The Commissioner of Income-Tax, Amritsar ...Petitioner

Versus

M/S Amritsar Solvex (P) Ltd., Amritsar ...Respondent

CORAM: HON'BLE MR.JUSTICE M.M.KUMAR
HON'BLE MR.JUSTICE RAJESH BINDAL

Present: Mr.Sanjiv Bansal, Advocate for the Revenue.

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RAJESH BINDAL, J.

The Income Tax Appellate Tribunal, Amritsar Bench, Amrtisar (for short, 'the Tribunal') has referred under Section 256 (2) of the Income Tax Act, 1961 (for short 'the Act') the following question of law which emerges from its order dated 28.10.1991 in ITA No.331(ASR)/1986 for the assessment year 1982-83:-

> "Whether on the facts and in the circumstances of the case, the Tribunal was right in law in allowing the appeal of the assessee?"

A perusal of aforesaid question of law makes it evident that it is absolutely vague. On perusal of the order passed by the Tribunal the real issue is regarding invocation of Section 145 (1) of the Income Tax Act, 1961. Accordingly, we re-frame the question as under:-

> "Whether on the facts and in the circumstances of the case, the Income Tax Officer was justified in invoking the provisions of Section 145(1) of the Income Tax Act, 1961 for rejection of books of accounts of the assessee?"

Briefly the facts are that the assessee filed its return of income, for the assessment year in question, on June 30, 1982 declaring a loss of

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Rs. 14,77,930/-. The assessment proceedings were taken under Section 143 (2) of the Income Tax Act, 1961(for short 'the Act'). On account of certain alleged defects found in the books of accounts maintained by the assessee, the Assessing Officer invoked the provisions of Section 145 (1) of the Act and rejected the books of accounts. However, in appeal, the Commissioner of Income-Tax (Appeals) (for short 'the CIT (A)') set aside order of rejection of books of accounts finding no justification in the action of the Assessing Officer in invocation of provisions of Section 145 (1) of the Act. The view expressed by the CIT (A) was upheld by the Tribunal. While upholding the view, the CIT (A) as well as Tribunal compared the quantitative details regarding gross profit rate, yield and also the wastage being shown by the assessee viz a viz other similarly situated dealers. The percentage on each account shown by the assessee was better than the other competitors.

Even before this court, learned counsel for the Revenue could not point out any material on record which would enable this court to take a view different than the one taken by the CIT (A) and as upheld by the Tribunal. Once it was found on comparison of quantitative details of gross profit rate, yield and wastage shown by the assessee to be better as compared to other similarly situated dealers, which was also accepted by the Revenue, there was no reason to reject the books of account of the assessee.

Accordingly, the question reframed above is answered against the Revenue and in favour of the assessee.

(Rajesh Bindal)
Judge

February 05,2007 **(M.M.Kumar)**
Pka **Judge**